



# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

February 10, 2003

In reply, please refer to:

Docket No. 03-01-02:ADJ:smb

Motion Nos. 2 and 5

Peggy Garber, Esquire  
General Counsel  
The Southern New England Telephone Company  
310 Orange Street  
New Haven, CT 06510

Jennifer D. Janelle, Esquire  
Murtha Cullina LLP  
City Place 1  
185 Asylum Street  
Hartford, CT 06103-3469

Re: Docket No. 03-01-02, Petition of Gemini Networks CT, Inc. for a Declaratory Ruling Regarding The Southern New England Telephone Company's Unbundled Network Elements

Dear Mmes. Garber and Janelle:

The Department of Public Utility Control (Department) acknowledges receipt of The Southern New England Telephone Company's (Telco or Company) letter dated January 10, 2003, requesting that the issues in the January 2, 2003 Gemini Networks CT, Inc. (Gemini)<sup>1</sup> Petition for Declaratory Ruling (Petition) be bifurcated. Specifically, the Telco requests that the first phase of this proceeding be directed to the legal issues of the Petition. The Telco states that should the Department find in Gemini's favor on the legal issues in the first phase of the proceeding, then a second phase would be initiated to address Gemini's other requested relief.<sup>2</sup> Accordingly, the Telco requests a

<sup>1</sup> Gemini was awarded its Certificate of Public Convenience and Necessity (CPCN) to offer wholesale Internet Access service to three Connecticut towns by the Department's Decision dated September 1, 1999 in Docket No. 99-03-12, Application of Gemini Networks, Inc. for a Certificate of Public Convenience and Necessity. In the Decision dated January 17, 2001 in Docket No. 00-10-20, Application of Gemini Networks, Inc. to Expand its Certificate of Public Convenience and Necessity, Gemini was granted facilities-based authority to provide wholesale telecommunications service throughout Connecticut. By Decision dated September 28, 2001 in Docket No. 01-06-22, Application of Gemini Networks, CT, Inc. To Expand its Certificate of Public Convenience and Necessity, Gemini's request to provide retail facilities-based and resold local exchange telecommunications services throughout Connecticut was granted.

<sup>2</sup> Gemini requests that the Department declare that certain hybrid fiber coaxial (HFC) facilities owned by the Telco, formerly leased to SNET Personal Vision, Inc. (SPV), constitute unbundled network elements (UNE) and as such, must be tariffed and offered on an element by element basis for lease to Gemini at total service long run incremental cost (TSLRIC) pricing. Should the Department determine that those facilities are UNEs subject to appropriate unbundling and pricing in accordance with this request, Gemini also requests that the Department immediately initiate a cost of service proceeding to determine the appropriate pricing structure, based on TSLRIC for those UNEs. Gemini further requests that the Department direct the Telco to file an inventory of all plant formerly leased to SPV including the condition of all such plant and the disposition of any plant no longer in place. Petition, p. 1.

procedural order that bifurcates this proceeding and limits the scope of discovery and hearings.<sup>3</sup> Telco January 10, 2003 Letter, p. 1.

The Department is also in receipt of the Telco's January 21, 2003 motion to dismiss the Petition, or in the alternative, stay and/or bifurcate issues and request for procedural order (Telco Motion). In particular, the Telco argues that the Petition should be dismissed because: (1) it is an untimely request for arbitration pursuant to §252 of the Telecommunications Act of 1996 (Telcom Act) and does not comply with the requirements of §252 of the Telcom Act; (2) it is inadequate on its face to apprise the Telco and the Department of the relief it is seeking in that Gemini fails to identify the specific features or functions of the HFC network that it seeks to unbundle; (3) it is moot as it relates to the HFC fiber, as spare fiber is already available to Gemini as the dark fiber UNE; (4) it is moot to the extent that Gemini is seeking transport similar to that provided to SPV of the HFC network because Gemini can obtain the same transport under the same terms and conditions provided to SPV pursuant to the Telco's interstate tariff; and (5) the Department has no jurisdiction over the HFC network distribution facilities as they were not and are not used to provide telecommunications services and, therefore, are not subject to unbundling pursuant to §251(c)(3) of the Telcom Act, §16-247b(a) of the General Statutes of Connecticut (Conn. Gen. Stat.), or any other federal or state law. Telco Motion, pp. 1 and 2.

The Telco also proposes as an alternative, that the Petition be stayed pending the Federal Communications Commission's (FCC) decision in its Triennial Review Proceeding.<sup>4</sup> However, to the extent that the Petition is not dismissed or stayed, the Telco recommends that the Department issue a procedural order to: (1) require Gemini to amend the Petition to identify (a) the features and/or functions of the HFC network that it seeks to unbundle, (b) how the requested UNE will be used for interconnection and/or access to the local telecommunications network, and (c) why the existing UNEs offered by the Telco do not satisfy Gemini's needs; (2) bifurcate the proceeding into two phases with only the legal issues addressed in phase one and Gemini's request for a cost study and inventory addressed in phase two; (3) order that phase one does not require any discovery or hearings, but will be resolved based on briefs submitted by the parties; (4) if any discovery is permitted in phase one, limit discovery to information

---

<sup>3</sup> The Telco states that it has been authorized by Gemini to represent that Gemini agrees that any discovery or hearings relating to the cost of service proceeding will be held in abeyance until the second phase of the proceeding. Telco January 10, 2003 Letter, p. 1

<sup>4</sup> See CC Docket No. 01-339, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability (Triennial Review Proceeding).

specifically required to resolve the legal issues; and (5) deny Gemini's request for any inventory in phase one, deferring such discovery until phase two. Id., p. 2.

Further, the Department acknowledges receipt of Gemini's January 30, 2003 response to the Telco Motion (Gemini Response). Gemini objects to the Telco Motion because the Telco mischaracterizes the Petition as an untimely request under the Telcom Act for arbitration concerning interconnection costs and other conditions relative to its UNEs. Gemini argues that the Petition was filed pursuant to relevant Connecticut state law provisions, including but not limited to Conn. Gen. Stat. §16-247b(a) for the purpose of determining whether the Telco's HFC network is subject to unbundling. Gemini also asserts that a filing under the arbitration provisions of 47 U.S.C. § 252 will become appropriate, if ever, only after that determination has been made. According to Gemini, to date, the Telco continues to claim that its HFC network is not subject to unbundling. Gemini Response, pp. 1 and 2.

Moreover, Gemini disagrees with the Telco's recommendation that the Petition be dismissed because Gemini has failed to specify the portions of the Telco's HFC network that should be unbundled. Gemini maintains that it has provided the Telco on a confidential basis, information concerning the portions of the network that it desires to use. Gemini also disagrees with the Telco's assertion that the Department lacks the authority to address the applicability of UNE requirements to the HFC network because the Telcom Act preempts state statutes on the subject. Gemini states that the Telco's assertion is without merit because the Telcom Act specifically provides that states will continue to play a critical role in this issue. Id., p. 2.

Gemini also disagrees with that portion of the Telco Motion which argues that because the HFC network is not currently used for telecommunications services, it is not subject to unbundling. In the opinion of Gemini, the Telco ignored a number of court decisions confirming that it is not the use, but the capability of a network that determines whether it is subject to treatment as a UNE. Therefore, Gemini urges the Department to move forward promptly with this proceeding and not to allow any of the Telco's claims to further impede or delay making the Company's abandoned HFC network available to competing telecommunications providers in Connecticut. Id.

Lastly, the Department is in receipt of the Telco's February 5, 2003 reply to the Gemini Response and the Office of Consumer Counsel's (OCC) February 5, 2003 objection to the Telco Motion (OCC Objection). The Department is also in receipt of the Telco's response to the OCC Objection, dated February 7, 2003.

Section 251(c)(3) of the Telcom Act requires in part, that incumbent local exchange carriers:

provide to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

In addition, Conn. Gen. Stat. § 16-247b(a) requires the Department on petition or its own motion, to:

initiate a proceeding to unbundle a telephone company's network, services and functions that are used to provide telecommunications services and which the department determines, after notice and hearing, are in the public interest, are consistent with federal law and are technically feasible of being tariffed and offered separately or in combinations.

In the opinion of the Department, the Petition acknowledges the requirements of §251(c)(3) of the Telcom Act and the Department's ability to require, pursuant to Conn. Gen. Stat. §16-247b(a), the unbundling of telephone company networks when conditions warrant. The Department believes that the Petition first seeks a determination as to whether the HFC network is subject to unbundling pursuant to Conn. Gen. Stat. §16-247b(a). As such, the Department is not persuaded by the Telco's argument that this is an arbitration proceeding. Rather, it is an unbundling proceeding established to permit the Department to investigate Gemini's request that certain elements of the HFC network be unbundled. Petition, p. 1. The Department also believes that before these network facilities can be subject to arbitration (as provided for by §252 of the Telcom Act), a determination must first be made that the HFC facilities may be unbundled pursuant to Conn. Gen. Stat. §16-247b(a). Accordingly, the Telco's request to dismiss the Petition is hereby denied.

The Department also disagrees with the Telco's request to stay the Petition pending the FCC's ruling in its Triennial Review Proceeding. As noted above, Conn. Gen. Stat. §16-247b(a) provides the Department with the authority to investigate and if warranted, unbundle telephone company network services and functions. In the opinion of the Department, the Telco has not presented sufficient evidence nor justification which indicates that the FCC will cause a wholesale revision to its unbundling rules and regulations in its Triennial Review Proceeding thereby annulling

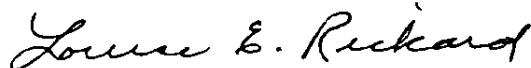
Garber Letter  
Docket No. 03-01-02  
Motion Nos. 2 and 5  
Page 5

Conn. Gen. Stat. §247b(a) and the Department's authority to unbundle telephone company network functions and elements.

Finally, the Department believes the Telco's proposal to bifurcate the instant proceeding into two phases with only the legal issues being addressed in phase one and addressing Gemini's request for a cost study and inventory in phase two, to be of merit. The Department has developed a procedural schedule that examines the Petition in two phases.<sup>5</sup> The Department also agrees with the Telco that Gemini should identify those facilities that it seeks to have unbundled. The Department will require Gemini to provide this information to the Telco and the Department no later than February 18, 2003, so that discovery of these facilities may be undertaken pursuant to the attached procedural schedule. Furthermore, the Department believes that the Telco's other suggestions (e.g., require Gemini to amend the Petition; the Department order that phase one does not require any discovery or hearings; or that discovery be limited to information that is required to resolve legal issues) are too constraining and would limit the Department's investigation. While the first phase of this proceeding would address the legal issues of the Petition, the nature of the underlying facts of the issues of this proceeding require greater discovery. Nevertheless, the parties will have the ability to request the Department rule that certain data requests, etc. are outside of those issues being addressed during phase one. Accordingly, the Department hereby rejects the Telco's proposals to limit phase one of this proceeding.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL



Louise E. Rickard  
Acting Executive Secretary

Attachment

cc: Service List

---

<sup>5</sup> The procedural schedule is appended hereto as Attachment 1

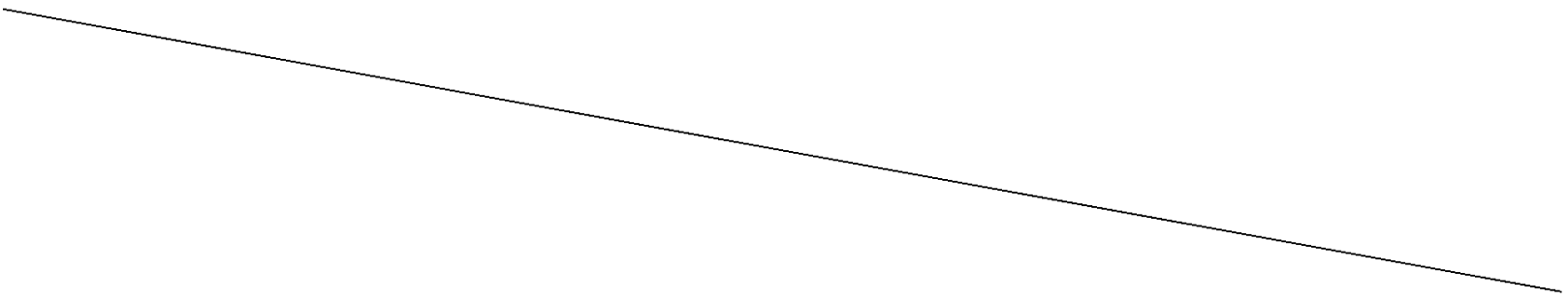
**DOCKET NO. 03-01-02**

**PETITION OF GEMINI NETWORKS CT, INC. FOR A DECLARATORY RULING  
REGARDING THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY'S  
UNBUNDLED NETWORK ELEMENTS**

<b>Events \Location</b>	<b>Date</b>	<b>Time</b>
Gemini Identification of Proposed UNEs	02/18/2003	04:00:00 PM
Interrogatories Sent	02/20/2003	04:00:00 PM
Interrogatories Responses Due	03/04/2003	04:00:00 PM
Written Comments	03/25/2003	04:00:00 PM
Reply Comments Due	04/08/2003	10:00:00 AM
Hearing*	04/23/2003	04:00:00 PM
Late Filed Exhibits Due*	04/30/2003	10:00:00 AM
LFE Hearing*	05/08/2003	04:00:00 PM
Briefs Due*	05/16/2003	04:00:00 PM
Reply Briefs Due*	05/23/2003	04:00:00 PM
Distribution of Draft Decision	06/11/2003	04:00:00 PM
Written Exceptions Due	06/18/2003	10:00:00 AM
Oral Arguments	06/25/2003	09:30:00 AM
Regular Meeting	07/02/2003	04:00:00 PM

\*EVENTS ONLY IF NEEDED

**EXHIBIT G**





# COPY

THIS TRANSCRIPT CONTAINS 27 PAGES  
NUMBERS 1 THROUGH 27

DRAFT  
FOR REVIEW AND CORRECTION PURPOSES ONLY

STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC UTILITY CONTROL

Docket No. 03-01-02

Petition of Gemini Networks Connecticut,  
Incorporated for Declaratory Ruling Regarding  
Southern New England Telephone Company's  
Unbundled Network Elements

Technical Meeting held at the Department  
of Public Utility Control, 10 Franklin  
Square, New Britain, Connecticut, on April 8,  
2003, beginning at 9:36 o'clock a.m.

H e l d   B e f o r e :

The Hon. JACK R. GOLDBERG, Chairperson

 **CUNNINGHAM SERVICES®**  
LEGAL AND CORPORATE SUPPORT SINCE 1965

NATIONAL HEADQUARTERS  
111 GILLET STREET • HARTFORD, CONNECTICUT 06105  
TELEPHONE (800) 842-4486 • FAX (800) 600-2216  
[www.cunninghamservices.com](http://www.cunninghamservices.com)

Hartford • Stamford • New York • Los Angeles • San Francisco • Irvine • Washington D C • Chicago • Boston • Miami

1 A p p e a r a n c e s:

2 For Gemini Networks Connecticut, Inc.:

3 MURTHA CULLINA, LLP

4 CityPlace I

5 185 Asylum Street

6 Hartford, Connecticut 06103-3469

7 (860) 240-6179

8 By: JENNIFER D. JANELLE, ESQ.

9

10 GEMINI NETWORKS, INC.

11 280 Trumbull Street, 24th Floor

12 Hartford, Connecticut 06103-3585

13 (860) 293-4281

14 By: RICHARD C. ROWLENSON, ESQ.

15

16 For Southern New England Telephone

17 Company:

18 SOUTHERN NEW ENGLAND TELEPHONE

19 COMPANY

20 310 Orange Street

21 New Haven, Connecticut 06510

22 (203) 771-2509

23 By: PEGGY GARBER, ESQ.

24 KEITH KROM, ESQ.

25

1 A p p e a r a n c e s (Cont'd.):

2 For the Office of Consumer Counsel:

3 WILLIAM VALLEE, ESQ.

4

5 For the Office of the Attorney General:

6 JOHN S. WRIGHT, ESQ.

7 Assistant Attorney General

8

9 DPUC:

10 PETER PESCOSOLIDO

11 PATRICIA REILLY

12 MARGARET BAIN

13 JESSE PIETRAS

14

15

16

17

18

19

20

21

22

23

24

25

1 THE CHAIRPERSON: We're here  
2 this morning for technical meeting on Docket  
3 03-01-02, Petition of Gemini Networks  
4 Connecticut, Incorporated for Declaratory  
5 Ruling Regarding Southern New England  
6 Telephone Company's Unbundled Network  
7 Elements.

8 I'm Commissioner Jack  
9 Goldberg. I'll be running the technical  
10 meeting today. Can I have appearances?

11 MS. GARBER: Peggy Garber and  
12 Keith Krom for SNET.

13 THE CHAIRPERSON: Further?

14 MR. WRIGHT: John Wright on  
15 behalf of the Attorney General, good morning,  
16 Commissioner.

17 MR. VALLEE: William Vallee  
18 for the Office of Consumer Counsel.

19 MS. JANELLE: Jennifer Janelle  
20 from Murtha Cullina for Gemini Networks, and  
21 I have Richard Rowlenon, who is in-house  
22 counsel for Gemini, with me today.

23 THE CHAIRPERSON: Further  
24 appearances?

25 Okay. What we are going to do

1 is we will start with Gemini. I'll tell you  
2 guys, that I've not been very happy with the  
3 conduct of this proceeding. We need to put  
4 together a record. We don't have a very good  
5 record. In fact, the record in this  
6 proceeding stinks. Both Gemini and SNET are  
7 jointly responsible for that. We are more  
8 trying to prevent each other from getting the  
9 information that each other needs and really  
10 that I need, this Department needs.

11 The record isn't there, we  
12 will have to look at other options. All  
13 options are on the table, and I'm willing to  
14 consider all options, but I need this  
15 information, and I want it, and I expect to  
16 get it. I want the stonewalling to stop, and  
17 there will be consequences if it doesn't.

18 We have, I believe, a couple  
19 of outstanding motions, motion 6, which is  
20 SNET's motion, I believe, to require more  
21 information. I would deny that motion other  
22 than TEL-4, the necessary and impair. I want  
23 Gemini to provide much more information, I  
24 want it to be specific, I expect it to be,  
25 and you'll hear from me if it isn't.

1 MS. JANELLE: Commissioner,  
2 with respect to that, we'd like to file that  
3 by way of brief, and we are willing to do it  
4 now, if you like. We can have it in by the  
5 end of the week, but we just don't feel that  
6 our witnesses should be subject to testifying  
7 about a legal standard. That's been our  
8 position in this.

9 So if the Commission wants  
10 that information, we are more than happy to  
11 provide it, and we will provide it now as  
12 opposed to in the course of the normal  
13 briefing schedule.

14 THE CHAIRPERSON: That's not  
15 allowable. That's not what I want. I need a  
16 record. A brief does not provide me a record  
17 I need. I need a witness to testify.

18 MS. JANELLE: To the legal  
19 standard of necessary and impair?

20 THE CHAIRPERSON: It's not  
21 just the legal standard, it's the entire  
22 question that's involved.

23 MS. JANELLE: Okay,  
24 Commissioner, that's fine.

25 THE CHAIRPERSON: The second

1 motion is -- we have another motion that's  
2 outstanding, is that 7?

3 MS. GARBER: Yes.

4 THE CHAIRPERSON: For?

5 MS. GARBER: For a more  
6 definite statement from Gemini as to the  
7 specific telecommunication services that they  
8 contend they cannot provide unless we provide  
9 the UNEs and how they would specifically be  
10 impaired. We are not asking that they tell  
11 us their entire business plan. We are just  
12 saying, you know, if there is at least one  
13 telecommunication service that you claim you  
14 can't provide without these UNEs, please  
15 identify them.

16 THE CHAIRPERSON: Okay, I  
17 recall that. You have two sentences you want  
18 to tell me before I rule on this?

19 MS. JANELLE: I would think  
20 that that goes along with the necessary and  
21 impair ruling that you just made,  
22 Commissioner, and that would be incorporated  
23 in our other filing.

24 THE CHAIRPERSON: Okay,  
25 because I am moving fast, so it does. You

1 understand what I want you to provide?

2 MS. JANELLE: Yes,  
3 Commissioner, we do.

4 THE CHAIRPERSON: Now please  
5 proceed with what you want to say to me, to  
6 this Department. Do you have something you  
7 need to say?

8 MS. JANELLE: We did not  
9 prepare anything because in speaking with the  
10 case coordinator, we were not sure where the  
11 Department was going with this technical  
12 meeting. The only statement we'd like to  
13 make is that we feel that we've been  
14 forthright. I don't think there is really  
15 anyone in the room that can claim that they  
16 don't know what we are seeking.

17 We are seeking use of the  
18 co-axial portion of the HFC network that  
19 still exists in addition to one small part of  
20 fiber on the end of that, and the constant  
21 claims from SNET that they don't know what we  
22 are asking for, we are sort of bewildered.  
23 We will put it in whatever terminology that  
24 they want it put in, if they let us know what  
25 that terminology is.



1           If the Department is confused  
2     as to what we are seeking, we apologize, and  
3     please let us know, but we are sort of  
4     bewildered at the claims that people don't  
5     understand what we want here.

6           THE CHAIRPERSON: Attorney  
7     Garber.

8           MS. GARBER: We understand  
9     that they want the entire co-axial network.  
10    The problem is that it's our belief that  
11    under the state law, which is required to  
12    comply with the Federal Act, that we have to  
13    know specifically what unbundled element,  
14    where does it start, where does it end, and  
15    what telecommunication service are you  
16    contending you can't provide without that  
17    element because they have to demonstrate the  
18    impairment, and unless we have facts, we  
19    can't put a defense on. That's all we've  
20    been saying.

21           THE CHAIRPERSON: Attorney  
22     Vallee, want to throw your two cents in?

23           MR. VALLEE: My two cents,  
24     Commissioner, is the OCC certainly concurs  
25     with the Department's analysis, discovery to

1 date has been incomplete probably on both  
2 sides. We urge the Department to continue to  
3 insist that the parties comply.

4 It sounds as though there is  
5 an allegation bouncing around the room about  
6 a chicken and an egg or a Catch-22 that,  
7 well, if they don't tell us what they want,  
8 then we can't tell them, all this kind of  
9 thing. It seems to me that it is doable, and  
10 I think we need to hold them to it.

11 THE CHAIRPERSON: How is it  
12 doable? What would you recommend?

13 MR. VALLEE: Well, I think the  
14 Department is doing what it is, call them in  
15 and just say do it. You have the motion 6  
16 and 7, which the Department has now ruled  
17 upon. I would suggest a strict timetable and  
18 we see what we get, and if we need another  
19 meeting to keep the feet to the fire, then  
20 that's what we do. There isn't a whole lot  
21 else you can do. The Department doesn't have  
22 the information, the OCC doesn't themselves  
23 either, so we can't come up with this  
24 information on either side, so I think the  
25 best you can do is use your authority which I

1 do think is granted to the Department under  
2 state law to make this all happen.

3 THE CHAIRPERSON: Attorney  
4 Wright.

5 MR. WRIGHT: I don't have any  
6 additional comments to that. We try not to  
7 involve ourselves in discovery disputes among  
8 the parties. I think the Commission itself  
9 is correct that the discovery has so far not  
10 been helpful for the Department, and rulings  
11 so far have been appropriate, and we support  
12 that.

13 THE CHAIRPERSON: Thank you.  
14 My impression is both sides feel that they  
15 have such a strong case that they don't need  
16 any showing, and that they are just going to  
17 win this. I don't know who is going to win  
18 this, but I do know that neither side has  
19 provided the evidence so far. I don't have a  
20 record here, and I want a record. I will  
21 continue to hold your feet to the fire. We  
22 will have as many of these as we need, and  
23 there are other options that I'm studying to  
24 see if we need to proceed in that manner.  
25 Right now this is the path we are going

1 along. We will try to stay on it.

2 Is there anything else anyone  
3 wants to say?

4 MS. JANELLE: Commissioner, if  
5 we just may, on February 18th, we filed a  
6 list, and we broke that network down into  
7 what we thought was a piece-by-piece  
8 analysis, and what I'm hearing today,  
9 although Mr. Pescosolido is shaking his head,  
10 what I'm hearing today is that that's not  
11 sufficient, and I guess we are still standing  
12 here saying, we are not sure what -- how much  
13 farther we are supposed to break that network  
14 down. We are at a loss and I apologize,  
15 but --

16 THE CHAIRPERSON: What  
17 happened to your arm?

18 MS. JANELLE: For the record,  
19 I broke my wrist in an incredibly stupid  
20 way. I fell off a step stool.

21 THE CHAIRPERSON:  
22 Mr. Pescosolido.

23 MR. PESCOSOLIDO: Thank you,  
24 Commissioner, I do. Picking up on Attorney  
25 Janelle's statement, I want to ask the

1 company if they could expand on -- I'm sure  
2 they've looked at the list -- what more  
3 information they need to help the company  
4 Gemini develop their request.

5 MS. GARBER: The only  
6 information we need to know is if they want  
7 each one of those individually or if there  
8 are some of those that have to be combined  
9 before they are usable. It goes to, so that  
10 we can figure out if it's technically  
11 feasible, whether access can be granted at  
12 the beginning or the end of whatever  
13 component they are telling us that they  
14 want.

15 MR. PESCOSOLIDO: Is that  
16 something Gemini can address?

17 MS. JANELLE: Again, I believe  
18 that we addressed that. Our position is that  
19 the elements are -- that list of elements is  
20 already combined into one network, and we  
21 don't want it ripped apart and recombined.  
22 We want it in the form that it's in. That's  
23 the broken down list of each and every  
24 element, and we want them combined as they  
25 currently exist. We don't want them

1 arbitrarily deconstructed and reconstructed  
2 in the network. We'd like to use it as it is  
3 in its currently combined form. That's, I  
4 think, where the breakdown is. That's where  
5 we don't understand, what more can we say.

6 MS. GARBER: As we've already  
7 stated, there is no network, and those  
8 components in, let's say, one block may exist  
9 in a combined form; however, in the next  
10 block, part of those components may have been  
11 removed.

12 So if what you are telling me  
13 is the only network element you are  
14 interested in begins at the top of that list  
15 and ends at the bottom of that list, it's a  
16 single network element, and that's where you  
17 are going to put your case on, then I'm  
18 fine. I just need to know how many discrete  
19 elements we are talking about.

20 MS. JANELLE: Commissioner, I  
21 believe therein lies the problem because  
22 we've been asking for an inventory of what's  
23 there. We want whatever is there. We don't  
24 know what has been removed. We don't know  
25 what has been taken down. We don't know what

1 exists in what form where.

2 We know that at some point in  
3 calendar year 2000, a complete network  
4 existed, and we know that we've been told  
5 that some pieces have been taken down, but we  
6 do not know what pieces have been taken  
7 down. We don't know what still exists, and  
8 what we are being told is you have to tell us  
9 what you, precisely what you want in which  
10 locations so that we -- you know, if it  
11 doesn't exist, then obviously you can't have  
12 it.

13 Well, tell us what exists. We  
14 want the whole list of what exists in  
15 whatever form it is, and if we can get our  
16 hands on that list of what exists, we will  
17 feed it back to you, every single one of  
18 those elements that is out there. That is  
19 what we want.

20 If there are pieces missing  
21 and the network doesn't support end-to-end  
22 connectivity with respect to those missing  
23 pieces, we will supply the missing pieces.  
24 We will reconstruct it, we will make it  
25 work. We are willing to do that, but we

1 don't know what's out there. We can't get an  
2 inventory. We can't get a blueprint. We  
3 can't get a list of what's been taken down,  
4 and we are being told you tell us what's out  
5 there. Short of sending engineers out and  
6 running the entire system, we have no idea  
7 what's out there.

8 Those are the elements that we  
9 believe were in the entire network to begin  
10 with. If any portions of those have been  
11 taken down, we don't know about it, but we  
12 want whatever is out there.

13 MS. GARBER: Commissioner, if  
14 I may.

15 THE CHAIRPERSON: Go ahead.

16 MS. GARBER: This case deals  
17 with network elements. It doesn't deal with  
18 a network, and every time that they ask for  
19 an inventory, what they are asking for is an  
20 inventory of the end-to-end network, or  
21 whatever the network was. That's irrelevant  
22 to what they need. What individual elements  
23 they need, if they exist in the facilities  
24 that are still there, what they need to  
25 provide the telecommunication services they



1 want to provide, we can tell them, as a  
2 general matter, that these components were  
3 used to build the network, and they may or  
4 may not exist in any portion of those 22  
5 cities. But to determine what elements they  
6 need, they do not need an inventory of  
7 everything that's out there on every street  
8 in every city.

9 MS. JANELLE: Our response  
10 would be then if they are there, we want  
11 them. It's as simple as that. To say that,  
12 you know, do you want end to end from top to  
13 bottom, if we say yes, the response is going  
14 to be, well, that doesn't exist over here so  
15 that doesn't count, you can't have it. If  
16 it's there, we want it, and if it's missing  
17 and it doesn't support the network, we will  
18 replace it, and I don't know how much clearer  
19 we can be on this.

20 THE CHAIRPERSON: Okay. I  
21 think you both made your positions as muddy  
22 as you have before. We will deal with that.  
23 Thank you. Thank you for now.

24 MS. JANELLE: We have one more  
25 outstanding issue, Commissioner. I'm sorry.

1 THE CHAIRPERSON: Okay.

2 MS. JANELLE: That is that the  
3 Department granted our motion to lift the  
4 protective orders on the material because  
5 actually we are hoping to garner the  
6 information that everybody is seeking. We've  
7 been trying to compile a list and just submit  
8 it ourselves, and I'd just like clarification  
9 on what the procedure is going to be on that  
10 material. Should we send our people down to  
11 go through the Department's files and they  
12 will be released to us? Is SNET going to  
13 provide that information in a public forum to  
14 us? We are just a little confused on the  
15 procedure.

16 MS. GARBER: Excuse me, that  
17 was not the ruling of the Commission. The  
18 Commissioner said that they would consider  
19 those dockets, but that the protective orders  
20 would stay in place. Now, if there are  
21 particular documents in those dockets that  
22 you can identify, we will be glad to take a  
23 look at them to determine whether they still  
24 contain proprietary information, but I didn't  
25 read the order as lifting the protective

1 orders.

2 MR. PESCOSOLIDO: I thought we  
3 said that the order that was in place in this  
4 proceeding would take precedence over the  
5 other dockets. I thought that's what our  
6 ruling was.

7 MS. GARBER: Excuse me, I  
8 didn't follow that.

9 MR. PESCOSOLIDO: I thought  
10 that the protective order in this proceeding  
11 took place -- took effect over the other  
12 dockets. I thought that's what we said. I'm  
13 going to have to go back and take a look at  
14 it.

15 MS. JANELLE: I have it right  
16 here. It says, "The Department will grant  
17 Gemini's requests and will also require any  
18 materials needed in protection will be  
19 covered by the protective order previously  
20 approved in this proceeding."

21 My understanding is either way  
22 we are now entitled to copies of them.  
23 Correct?

24 MR. PESCOSOLIDO: Right.

25 MS. GARBER: That was subject

1 to the same protection and many of those were  
2 under the highest level of protection and  
3 were only provided to the Commission and the  
4 OCC or the AG. So to the extent they were  
5 subject to that protection, that's my  
6 understanding that was to remain in place.

7 MR. PESCOLIDLO: Right.

8 MS. GARBBER: And, Ms. Janelle,  
9 you and I have talked once before, if she can  
10 identify any document in those files that she  
11 believes should no longer, you know, that  
12 they need or they no longer need to be  
13 protected, we will be glad to talk to her  
14 about that, or if there is a fact that they  
15 think they can prove by that document, maybe  
16 we can reach a stipulation and we don't have  
17 to put all kinds of documents in here. We  
18 will be glad to work either on a stipulation  
19 or to see whether or not the documents no  
20 longer need the highest level of protection.

21 MR. VALLEE: The argument has  
22 been also raised that if the equipment is,  
23 the infrastructure is derelict at this point,  
24 it's just essentially being ripped down as  
25 it's encountered, then why would it need to

1 continue to be protected?

2 MS. GARBER: That's why we say  
3 on a document-by-document basis we are glad  
4 to consider those. But as you know, those  
5 dockets dealt with, you know, basically rate  
6 case, cost of service studies. There is all  
7 kinds of information in there that is still  
8 relevant and still should be protected from  
9 SNET, the telephone company's point of view.  
10 There may, however, be documents in there  
11 that dealt only with the HFC network that  
12 would no longer need to be protected, and we  
13 will be glad to work on that.

14 MS. JANELLE: And our request  
15 was specifically limited to only the  
16 HFC-related documents. We are not interested  
17 -- we are not trying to get the whole docket.  
18 Our request was specifically limited to the  
19 HFC dockets. The problem is that these were  
20 the dockets that were identified by the  
21 Department in its requests, so they are  
22 obviously relevant, and some of them are so  
23 old they are no longer available on the web.  
24 We don't have copies of them.

25 I can't -- again, she is

1 asking that I identify the dockets that I  
2 want -- the documents that I want. I haven't  
3 seen the documents, and I can't see the  
4 documents, so how can I identify them? Sort  
5 of the chicken and the egg problem that we  
6 are encountering here. That's why I'm  
7 curious as to are there going to be versions  
8 provided to us of what we are now entitled to  
9 get or how is it going to work?

10 MS. GARBER: As I previously  
11 offered, we can make a list of the protected  
12 documents, and you can identify which of  
13 those documents you believe may be relevant,  
14 and then we can go from there. Just by the  
15 names of many of the documents, you are going  
16 to see that they have absolutely no  
17 relevance.

18 THE CHAIRPERSON: Why don't  
19 you prepare that list initially and get it to  
20 both of us and to all the parties, and then  
21 we will examine it too, and we will decide,  
22 make an independent evaluation.

23 MS. GARBER: Okay.

24 MR. PESCOSOLIDO: So I'm  
25 clear, you are only interested in anything

1       pertaining to HFC?

2                   MS. JANELLE:   That's all that  
3       we are interested in.

4                   MS. GARBER:   Just so I  
5       understand, do you want us to go through them  
6       and only identify the documents that we  
7       believe are related to HFC, or do you want us  
8       to provide a list of all the documents that  
9       were proprietary?

10                  THE CHAIRPERSON:   Supply all  
11       the documents that are proprietary, and we  
12       will make an evaluation on our own.

13                  MS. GARBER:   Thank you.

14                  MS. JANELLE:   Thank you,  
15       Commissioner.

16                  THE CHAIRPERSON:   We will get  
17       back to everybody.

18                  MS. GARBER:   Commissioner, as  
19       far as the briefing schedule that's just off  
20       on the reply at this point in time?

21                  THE CHAIRPERSON:   Actually,  
22       I'm not sure what the schedule is at this  
23       moment.   Hold on one second.

24                  MS. GARBER:   The reply briefs  
25       were originally due today, and I believe that

1 was going to be one of the issues that we'd  
2 discuss today.

3 THE CHAIRPERSON: I'll be  
4 honest, I'm not sure how useful the reply  
5 briefs will be based on the commentary we  
6 received up until now, so I will put that off  
7 and get back to everybody with the new  
8 schedule.

9 MS. JANELLE: Commissioner,  
10 Mr. Rowlenon just pointed out to me that  
11 there was one more outstanding motion to be  
12 ruled on, and I believe that was motion  
13 number 8, which was our motion to compel more  
14 information from SNET based on our  
15 interrogatories. Unless I missed it, I don't  
16 think that was ruled on.

17 THE CHAIRPERSON: I did 6 and  
18 7.

19 I'll have to get back to you  
20 on that one.

21 MS. JANELLE: That's fine.  
22 Thank you.

23 THE CHAIRPERSON: We will have  
24 that to you by the end of the day.

25 MS. GARBER: Commissioner,



1 will you have the dates when interrogatory  
2 responses are due and when you would like  
3 that list from us?

4 THE CHAIRPERSON: Yes.

5 MS. GARBER: Thank you.

6 THE CHAIRPERSON: I will have  
7 it to everybody by the end of the day today  
8 because I want to get this thing moving  
9 again.

10 MR. PESCOSOLIDO:  
11 Commissioner, if I could, I'd just like to  
12 put the parties on notice that because of the  
13 problems that we've been having getting the  
14 information and the changes to the schedule,  
15 we are probably going to have to go beyond  
16 the July 2nd final due date, which we will  
17 probably have to seek a waiver of the  
18 statutory requirement, that means your  
19 decision, so I have to get agreement from the  
20 parties on that, too.

21 THE CHAIRPERSON: Do you have  
22 any problem?

23 MS. JANELLE: No, we have no  
24 problem.

25 MS. GARBER: No.

1 THE CHAIRPERSON: Thank you.  
2 No problems from both parties. Thank you.  
3 We will get back to everybody as quickly as  
4 we can because we are not going to hold the  
5 process up. Thank you. Anything further?  
6 Going once, going twice.

7 MS. GARBER: Thank you.

8 THE CHAIRPERSON: The man  
9 behind the curtain is okay?

10 MS. GARBER: He is okay.

11 THE CHAIRPERSON: Thank you.  
12 This technical meeting is recessed.

13 MS. JANELLE: Thank you,  
14 Commissioner.

15 (Whereupon, the above  
16 proceedings were adjourned at 9:57 o'clock  
17 a.m.)

18

19

20

21

22

23

24

25

CERTIFICATE

I hereby certify that the foregoing 26 pages are a complete and accurate computer-aided transcription of my original stenotype notes taken of the Technical Meeting in Re: DOCKET NO. 03-01-02, PETITION OF GEMINI NETWORKS CONNECTICUT, INCORPORATED FOR DECLARATORY RULING REGARDING SOUTHERN NEW ENGLAND TELEPHONE COMPANY'S UNBUNDLED NETWORK ELEMENTS, which was held before the Hon. JACK R. GOLDBERG, Chairperson, at the Department of Public Utility Control, 10 Franklin Square, New Britain, Connecticut, on April 8, 2003.

-----  
Sandra V. Semevolos, R.M.R.,  
C.R.R., L.S.R.  
Notary Public  
CUNNINGHAM SERVICES  
111 Gillett Street  
Hartford, Connecticut 06105  
[www.cunninghamservices.com](http://www.cunninghamservices.com)